LIBRARY
COURT, U. S.

Office Supreme Court, U.S.
FILED
JUN 12 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. [redacted] 705

THE PULLMAN COMPANY, *Petitioner*

v.

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, A. G. WISE, and G. H. HARRIS, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

HERBERT S. ANDERSON
165 North Canal Street
Chicago 6, Illinois

HOWARD P. ROBINSON
11 South La Salle Street
Chicago 3, Illinois

ROBERT DILLER
Counsel for Petitioner

SIDLEY, AUSTIN, BURGESS & SMITH
Of Counsel

LINCOLN PRINTING COMPANY, CHICAGO—WABASH 2-4000

INDEX

	PAGE
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Reasons for granting the writ	4
Conclusion	11
Appendix A—Excerpts from the Railway Labor Act	12
B—Opinion below	14
C—Orders below	27

CITATIONS

Cases:

Brotherhood of Maintenance of Way Employees v. *United States*, 366 U. S. 169	6
Brotherhood of Locomotive Engineers v. *Baltimore & Ohio R. Co.*, 372 U. S. 284	10
Brotherhood of Railroad Trainmen v. *Chicago River & Indiana R. Co.*, 353 U. S. 30	10
Brotherhood of Railway and Steamship Clerks v. *Atlantic Coast Line R. Co.*, 201 F. 2d 36	10
Elgin, Joliet & Eastern Ry. Co. v. *Burley*, 325 U. S. 711	10
Terminal Assn. v. *Trainmen*, 318 U. S. 1	9
United States v. *Lowden*, 308 U. S. 225	6
Virginia Ry. Co. v. *System Federation No. 40*, 300 U. S. 515	10

Statutes:

The Railway Labor Act, 45 U. S. C. §§ 151 *et seq.*	
Section 2, First, 45 U. S. C. § 152, First	5, 10
Section 2, Second, 45 U. S. C. § 152, Second	10
Section 6, 45 U. S. C. § 156	5, 7, 9
Section 10, 45 U. S. C. § 160	3, 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. .....

THE PULLMAN COMPANY, *Petitioner*

v.

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, A. G. WISE, and G. H. HARRIS, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above-entitled case on April 10, 1963.

OPINION BELOW

The opinion of the Court of Appeals, printed in Appendix B hereto, *infra*, pp. 14-26, has not yet been officially reported.

JURISDICTION

The judgment of the Court of Appeals was entered on April 10, 1963. *Infra*, p. 27. Rehearing was denied on May 20, 1963. *Infra*, p. 28. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254 (1).

QUESTION PRESENTED

Whether the respondent labor organization illegally called a strike before the parties had exerted every reasonable effort to settle a dispute over certain new proposals submitted by the organization following the report of an emergency board appointed pursuant to Section 10 of the Railway Labor Act.

STATUTE INVOLVED

The statutory provisions involved are Sections 2, First and Second, 6, and 10 of the Railway Labor Act, 45 U. S. C. §§ 152, First and Second, 156, and 160. These provisions are printed in Appendix A, *infra*, pp. 12-13.

STATEMENT

The jurisdiction of the District Court was invoked under 28 U. S. C. §§ 1331 and 1337 and the Railway Labor Act, 28 U. S. C. §§ 151 *et seq.*, when The Pullman Company sought an injunction against a strike of Pullman conductors which the Order of Railway Conductors and Brakemen had called for April 12, 1962.[1] R. 4-32. A temporary restraining order was issued on April 11 and an injunction on April 23, after a hearing held on April 18. R. 33-35, 38-126, 246-247.

The District Court reserved jurisdiction to enter such orders as might be appropriate upon proper showing by the defendants that the violations of the Railway Labor Act which the court had found to exist had been cured. R. 247. Thereafter, the organization sought to have the injunction vacated, but the District Court, after a hearing, denied the motion on June 4, 1962. R. 248-252, 261-295.

The organization appealed both from the order granting the injunction and from the order denying the motion to

---

[1] We shall refer to the parties hereinafter as "Pullman" and "the organization."

vacate. R. 301. The court below held that the injunction should not have been issued in the first place and did not review the second order continuing it in effect. *Infra*, pp. 26, 27.

The facts necessary to a consideration of the question raised by this petition are as follows:

Pullman is a service company, owned by some 53 major railroads of the United States, to most of which it renders sleeping car service under contract. Upon short notice, any railroad can discontinue its service requirements of Pullman, if it decides to perform sleeping car service with its own employees instead of Pullman's (a so-called "take-over") or if it discontinues sleeping car service on its lines in whole or in part, and some railroads have done so. R. 173-174, 190. Pullman's operations are not profitable. Its deficits are made good by the railroads that use its services, pursuant to contract. R. 174.

Following the report of an emergency board,[2] the organization met with Pullman and submitted two separate proposals for the relief of Pullman conductors who might be deprived of employment by railroad abandonments, mergers, and take-overs of Pullman service. R. 62-66, 97-106, 193-207. This action occurred at two brief sessions on December 28 and 29, 1961, about midway in the period referred to in Section 10 of the Railway Labor Act: ". . . for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose." 45 U. S. C. § 160.

Pullman declined to accept the proposals as submitted and suggested that the railroads should be consulted. Both proposals involved additional expense to the railroads, and one of them contemplated an agreement to which the rail-

[2]Emergency Board No. 139, appointed pursuant to Section 10 of the Railway Labor Act to investigate and report respecting a dispute between Pullman and the organization, in which the organization had called a strike. R. 59, 61, 164-192.

roads, as well as Pullman and the organization, would be parties. R. 65-66. The emergency board, it should be observed, had admonished the parties that any real solution to the problem of Pullman conductors who might be displaced by railroad abandonments, mergers, and take-overs could only be accomplished by cooperation among Pullman, the organization, and the several railroad users of Pullman service. R. 188-189.

For the rest of the thirty-day period following the issuance of the board's report the organization's negotiator took no action. Although he was the moving party, he remained silent until April 2, 1962, when the organization called a strike. R. 67, 106, 239-240, 243.

According to the opinion below:

> "On April 3, the National Mediation Board gave notice that it would again enter the proceedings, in the meantime requesting a further postponement of the strike. The organization agreed to continue its conferences with Pullman and the Board, but declined to postpone the strike." *Infra*, p. 22.

This representation is not quite accurate. The organization's reply to the board's request was as follows (emphasis supplied):

> "The Organization is not agreeable to deferring strike action but is agreeable *to meet Board Member Boyd* for further conferences *with the firm understanding that we have all ready* [*sic*] *fulfilled the requirements of the Railway Labor Act.*" R. 209.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted to review the order below because it authorizes a strike in the railroad industry without exhaustion of the procedures set up in the Railway Labor Act for the peaceful settlement of disputes and the avoidance of premature and unnecessary interruptions of commerce. Not even the first requirement of the Act has been met in this case, for it is inconceivable that in two

short conferences on two successive days, on two new and debatable proposals, the parties complied, or could have complied, with the command of Section 2, First, of the Act that they "exert every reasonable effort" to reach agreement and settle their dispute. The organization's two proposals were new as to the "means" of accomplishing the avowed purpose of job security and severance pay. Certainly they required further discussion and negotiation. But more importantly, the "means" proposed could only be achieved by the express agreement of the several railroad companies involved. Yet after two introductory sessions at which the proposals were submitted, and three months of inactivity, the organization claimed that it had "fulfilled the requirements of the Railway Labor Act" and obviously wanted no further conferences with Pullman.

The court below mistakenly treated the appeal as if it involved a question of notice under Section 6 of the Railway Labor Act, representing Pullman as claiming that the organization had not observed the correct procedure in submitting its proposals and therefore had not earned the right to strike. *Infra*, pp. 15, 21-22, 23-24. Pullman made no such claim. It is not disputed that Pullman had long known of the organization's objectives, which the proposals of December 1961 were designed to achieve. In a notice of November 7, 1960, formally served under Section 6 of the Railway Labor Act, the organization had adequately informed Pullman that it wanted certain benefits for Pullman conductors adversely affected by railroad abandonments, mergers, and take-overs, to wit, job security in certain situations, severance pay in others.[3] R. 132-134. This Section

[3]The organization in this first attack on the problem proposed a form of "job freeze," to wit: If the number of positions was reduced by a take-over, abandonment, merger, etc., positions equal in number to those abolished were to be established on the remainder of sleeping and parlor car operations. The notice contemplated, also, severance pay for Pullman conductors whose positions were discontinued "for any reason" and for whom no other positions were available. R. 132-134.

notice had been the subject of negotiations in the spring and summer of 1961 and (after a strike threat by the organization) was considered by Emergency Board No. 139 in the fall of 1961. R. 48-50, 59-62, 95-97, 241-242.

The board issued its report to the President on December 11, 1961 (R. 164-192), disapproving and recommending withdrawal of both of the organization's proposed means of reaching its goals. The board made no specific recommendations in lieu of the rejected proposals. It recognized, however, two situations in which it thought Pullman conductors were entitled to relief: (1) mergers, consolidations, or abandonments by railroads, in connection with which it discussed the severance pay provided for railroad employees under the Washington Job Protection Agreement;[1] and (2) take-overs by railroads of sleeping car service, in connection with which it mentioned the possibility of Pullman conductors' becoming railroad employees. As to the means of providing the recommended relief the board urged a new approach—a "new solution" in the words of the opinion below—not contemplated by the organization's proposals of November 7, 1960, namely, participation of the railroads, with Pullman and the organization, in an effort to arrive at a "real solution." In fact, the board regarded railroad participation as essential. R. 190-191.

Influenced by the report of Emergency Board No. 139, the organization on December 28 and 29, 1961, submitted to Pullman new proposals providing for two types of relief, depending upon the cause of job loss. For conductors deprived of employment by abandonments and mergers only, it proposed severance pay. For conductors who would be deprived of Pullman employment by railroad take-overs

[1] The Washington Job Protection Agreement of 1936, in general, provides displacement and severance allowances for railroad employees adversely affected by mergers, consolidations, etc., by two or more railroads. See *United States* v. *Lowden*, 308 U. S. 225, 234 (1939); *Brotherhood of Maintenance of Way Employees* v. *United States*, 366 U. S. 169, 173-174 (1961).

of Pullman service, it proposed that such conductors should, by agreement with the railroads, become railroad employees, carrying their jobs and seniority with them and working under the terms of their collective bargaining agreement with Pullman (continuing to be represented, of course, by the Order of Railway Conductors and Brakemen).[5] R. 62-63, 97-106, 193-207.

Neither of these proposals was formally labelled or served as a notice under Section 6 of the Railway Labor Act. But neither at the time of service nor later did Pullman raise any objection to the proposals on that ground. There was, in fact, very little discussion of the proposals at the two introductory sessions, except that Pullman pointed out, with respect to the first proposal, that it involved, in effect, a spreading of the severance pay costs of a single abandonment or merger over all the railroads using Pullman service, including, of course, railroads not concerned in the transaction giving rise to the expense. R. 65-66, 99-106. This difficulty had not been considered by Emergency Board No. 139, which was concerned with the excessive scope of the original severance pay proposal rather than its cost impact on particular railroads. R. 187-189. The second proposal, also, raised the possibility of entanglement, on certain railroads, in the claims of another organization representing conductors and claiming conductor work on those railroads, namely the Brotherhood of Railroad Trainmen. R. 76-78.

The opinion below is written in such a way as to give the following erroneous impression of the period intervening between the submission of the December 1961 proposals and the issuance of the strike call:

> "Several meetings followed, various counter-proposals were made by Pullman, and numerous letters were exchanged by the parties without agreement

[5] Since this plan was to be presented to the railroads by the organization and Pullman, acting together, it was referred to as a "Joint Proposal."

> being reached. On April 3, 1962 [correctly April 2], the organization gave notice of a strike to begin April 12 . . .". *Infra*, p. 22.

To the contrary, the record is clear that several meetings did not follow the submission of the December 1961 proposals; there were no meetings at all. Counter-proposals were not made by Pullman. "Numerous letters" were not exchanged between the parties. R. 67, 106. The strike call of April 2, 1962, was issued solely on the basis of two collective bargaining sessions at which Pullman had declined to accept certain proposals—new means of achieving job protection and severance pay—but had suggested that, as the railroad users of Pullman service would be financially involved, they must be consulted. R. 66.

Concerned with a nonexistent notice question, and deciding the case on that basis, the court below permitted itself to dispose of the question of adequacy of negotiations, not by examination of the record but by means of assertions begging the question, as follows:

> "The proposals of December, 1961, only attempted to implement the suggestions of the Emergency Board. The fact that Pullman and the organization reached an impasse in negotiations on the 'means' by which job protection was to be accomplished is immaterial to whether the organization violated the Railway Labor Act. If the parties complied with the bargaining requirements of the Act, the District Court had no authority to grant the injunction." *Infra*, p. 24.

Where was the "impasse in negotiations," after three months of availability (R. 106), but nothing more, on the part of the proponent of the disputed proposals? When had the parties, in two short sessions and without approaching the vitally concerned railroads, "complied with the bargaining requirements of the Act"?

The District Court, supported by the record, found that, as to the new issues that had arisen in December 1961, involving participation by the railroads, the processes of

the Railway Labor Act had not been exhausted. It did not make the finding attributed to it by the court below, to the effect that the organization had "failed to exhaust the provisions of the Railway Labor Act as respects the formal notice requirements of Section (6)." *Infra*, p. 15. It found, instead, that the proposals were new, as unquestionably they were, and that as to the issues raised by these new "means" proposals "the processes of the Railway Labor Act" (not "the provisions of the Railway Labor Act as respects the formal notice requirements") had not been exhausted. R. 242-246. Certainly this language refers to negotiation, not notice.

With regard to the period preceding the strike call, no other finding was possible. Negotiations having been suspended for three months, the parties could not have reached an "impasse" and "complied with the bargaining requirements of the Act." Nor had Pullman created an "impasse" at the outset by declining to accept the December 1961 proposals as submitted, even if they "only attempted to implement the suggestions of the Emergency Board." The court below itself called those proposals a "new solution," with regard to which, we should suppose, no one could claim that Pullman had an obligation of passive acceptance upon first presentation. The holding of the court below, however, imposed upon Pullman just such an obligation, for after two presentation sessions—one proposal on one day and the other on the next—the organization, in the view of the court below, was free to strike. Cf. *Terminal Assn.* v. *Trainmen*, 318 U. S. 1, 6 (1943).

Rejection of this intolerable conclusion requires that fulfillment of the statutory duty to exert every reasonable effort to settle the dispute must be found, if at all, in the three weeks between the strike call and the issuance of the injunction. Yet in that period the parties had only one conference, if any,[6] and finally began negotiations—paper

[6]Pullman's negotiator doubtfully recalled a conference on April 10, 1962. R. 69.

negotiations—through the offices of the National Mediation Board. R. 69-76, 107, 108-113, 135-149. These incipient efforts appeared not to have been exhaustive to the District Court, the trier of facts. The court below found to the contrary only on representations unsupported by the record.

In legal justification of the District Court's action, there can be no doubt that the duty of the parties to a railroad labor dispute to exert every reasonable effort to reach an agreement and settle the dispute, as expressed in Section 2, First, of the Railway Labor Act, permeates the Act and applies during the thirty-day period after an emergency board report as well as before. This period, prescribed in Section 10, is not, we submit, a mere "waiting period," as it was ineptly termed in the opinion below. *Infra*, p. 25. Guided by such light as an emergency board report may throw, the parties during this period have a continuing duty to confer and negotiate in an effort to reach an agreement. 45 U. S. C. § 152, First and Second; *Elgin, Joliet & Eastern Ry. Co.* v. *Burley*, 325 U. S. 711, 724-725 (1945). To construe it as a blank "waiting period" of inactivity—as the organization and the court below apparently did—is entirely contrary and inimical to the spirit and purpose of the statute.

Since the obligation to negotiate existed, the District Court had both the power and the duty to decree, on the facts, that it had or had not been discharged. Under the scheme of the statute, there is no other agency to enforce the necessary compliance with its terms. *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515 (1937); *Brotherhood of Railway and Steamship Clerks.* v. *Atlantic Coast Line R. Co.*, 201 F. 2d 36 (C. A. 4, 1953), cert. den. 345 U. S. 992; *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R. Co.*, 353 U. S. 30 (1957). This Court has lately held, in a case raising the specific question, that the parties *had* exhausted the procedures of the Act. *Brotherhood of Locomotive Engineers* v. *Baltimore & Ohio R. Co.*, 372 U. S. 284 (1963). Quite obviously, in that case, if the parties had

not reached the point of exhaustion, this Court would have so held, and an injunction would have issued to prevent a violation of the statute. From the facts in this case it is equally obvious that the parties had not reached the point of exhaustion and that the strike call was premature.

CONCLUSION

In order to enforce the bargaining requirements of the Railway Labor Act, this petition for a writ of certiorari should be granted.

Respectfully submitted,

HERBERT S. ANDERSON
165 North Canal Street
Chicago 6, Illinois

HOWARD P. ROBINSON
11 South La Salle Street
Chicago 3, Illinois

ROBERT DILLER
Counsel for Petitioner

SIDLEY, AUSTIN, BURGESS & SMITH
Of Counsel

JUNE 12, 1963.

APPENDIX A

Excerpts from the Railway Labor Act, 45 U. S. C. §§ 151 et seq.

§ 152. General duties—Duty of carriers and employees to settle disputes

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Consideration of disputes by representatives

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

* * * * *

§ 156. Procedure in changing rates of pay, rules, and working conditions

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules,

or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board. May 20, 1926, c. 347, § 6, 44 Stat. 582; June 21, 1934, c. 691, § 6, 48 Stat. 1197.

* * * * *

§ 160. Emergency Board

If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this chapter and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose. May 20, 1926, c. 347, § 10, 44 Stat. 586; June 21, 1934, c. 691, § 7, 48 Stat. 1197.

APPENDIX B

OPINION BELOW

IN THE

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

No. 13844 September Term, 1962 January Session, 1963

THE PULLMAN COMPANY, Plaintiff-Appellee, v. ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, A. G. WISE, and G. H. HARRIS, Defendants-Appellants.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

April 10, 1963

Before SCHNACKENBERG, CASTLE and SWYGERT, *Circuit Judges.*

SWYGERT, *Circuit Judge.* The action instituted below was for an injunction to enjoin a planned strike of the conductor-employees of plaintiff, The Pullman Company. The defendants include the Order of Railway Conductors and Brakemen and two officers of that labor organization.

A temporary restraining order was granted pending a trial on the merits which occurred on April 18, 1962. The trial judge, on April 23, 1962, entered findings of fact, conclusions of law, and a final decree enjoining the strike. This appeal therefrom followed.

The injunction was granted on the ground that the conductors' organization had violated the Railway Labor Act, 45 U. S. C. 152, *et seq.* It is clear that the District Court lacked jurisdiction to grant an injunction in this labor dispute, Norris-LaGuardia Act, 29 U. S. C. § 101 *et seq.*, unless a clear violation of the Railway Labor Act was shown. *The Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R. Co.*, 353 U. S. 30 (1957); *Virginia Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515 (1937).

The common stock of The Pullman Company is owned by fifty-three railroads that acquired its capital stock in 1947, following a decree of a federal district court in Philadelphia requiring Pullman, Inc. to divest itself of its sleeping car business.

The Pullman Company as it presently exists under railroad ownership is a service enterprise. Under its Uniform Service Contract with the railroads it serves, Pullman must offer its services as an innkeeper of hotels on wheels to any railroad which desires its service. Upon notice, any railroad can discontinue its service requirements; furthermore, each railroad has the right at any time to take over the operation of sleeping cars from Pullman.

The instant dispute revolves around the right of the railroads to discontinue their relations with Pullman on short notice and the disruptive effect this may have on the employees of Pullman represented by the conductors' organization. While other issues are collaterally involved in the dispute between Pullman and the organization, it is sufficient for our purpose to focus on this aspect of the dispute because it appears from the District Court's decision that the injunction was granted on the grounds: (1) the organization failed to exhaust the provisions of the Railway Labor Act as respects the formal notice requirements of Section (6) of the Act, 45 U. S. C. § 156; (2) the mediation efforts of the National Mediation Board as required by 45 U. S. C. § 155 had not been terminated as of

the date of the proposed strike; (3) the organization had failed to obtain a proper strike ballot vote from its membership regarding the proposed strike; and (4) the "Joint Proposal" made to Pullman by the defendants related to intercorporate arrangements and hence was not "a proper subject of collective bargaining" under the Railway Labor Act.

On February 27, 1959, the organization served a Section (6) notice on Pullman, proposing wage increases. On March 30, 1959, Pullman served a notice on the organization proposing modification of rules governing working conditions. The organization filed its own notice for changes in rules governing working conditions on April 24, 1959; this notice related to consolidation of seniority rosters.

Negotiations between the parties were conducted but no agreement was reached. On September 22, 1959, the organization submitted a strike ballot to its members who voted to authorize a strike.

On November 7, 1960, after the strike ballot just mentioned, the organization served another Section (6) notice on the company proposing job protection and other rules for Pullman conductors.[1] An examination of the Section (6) notices shows that the one dated November 7, 1960, contains the matters at issue in this case.

---

[1] The proposed rule changes in the Section (6) notice read:

"No conductor of The Pullman Company subject to this Agreement shall be furloughed, dismissed or placed in a worse condition with respect to his rates of pay, rules or working conditions in anticipation of or as a result of:

(1) The termination, cancellation or modification of any contract between The Pullman Company and any other common carrier by railroad, which now exists or which may hereafter be consummated covering any services or work customarily performed by Pullman conductors in connection with the operation of parlor cars or sleeping cars owned by or leased to The Pullman Company, or

(2) The abandonment, transfer, consolidation or merger of any other common carrier by railroad that affects the operation of sleeping or parlor cars owned by or leased to The Pullman Company."

With the assistance of the National Mediation Board, a mediation agreement was executed between the organization and Pullman on November 18, 1960, which resolved the wage issue between the parties. The mediation agreement continued the other issues raised by the Section (6) notices (including those raised by the notice of November 7, 1960) under the jurisdiction of the National Mediation Board. The agreement permitted the service of additional Section (6) notices by the company as counterproposals to the organization's notices. On December 5, 1960, the company served a Section (6) notice on the organization proposing the compulsory retirement of Pullman conductors at age sixty-six on and after January 1, 1962, and at age sixty-five on and after January 1, 1963.

The National Mediation Board terminated its services on August 4, 1961, and a strike was called for September 4, 1961.

All of the issues not settled by the mediation agreement were submitted to an Emergency Board appointed by the President of the United States on September 1, 1961, pursuant to Section 10 of the Railway Labor Act.

The Emergency Board reported to the President on December 11, 1961. The Board listed twenty-five issues in

---

The means proposed to implement the above job-protection arrangement were set out by the organization in the same Section (6) notice:

> "It is further agreed that if the number of positions of conductors are reduced by the actions enumerated in points 1 and 2, provisions shall be made to establish a like number of positions within the scope of the Agreement between The Pullman Company and its Conductors, equal to those abolished on the remainder of the sleeping and parlor car operations. The method of filling such positions and the procedure to be followed in connection therewith shall be determined by agreement with the duly designated representatives of the conductors.
> "It is further understood and agreed that if for any reason the position of a Pullman car conductor is discontinued hereafter and no other Pullman conductor position is available to such conductor, or the conductor affected under the scope of the Agreement, then in such event the Washington Job Protection Agreement (Agreement of May, 1936, Washington, D. C.) shall be construed as applicable and its benefits shall be granted to the conductor or conductors who are deprived of employment."

dispute that were yet unresolved. The Board's discussion in its report of the issue of "Job Stabilization and Severance Allowance" is pertinent to our discussion.[2]

It is to be noted that in evaluating the organization's proposals in the Section (6) notice of November 7, 1960, the Emergency Board rejected any proposal for a "job freeze," and viewed the organization's proposal as to severance benefits as being impractical without additional groundwork being laid. The Board's suggestions along this

---

[2] "1. Job Stabilization and Severance Allowance.
(Issue No. 24; New Rule.)

"There is no rule in the current Agreement covering loss of jobs by conductors. The Organization has proposed a new rule which provides in effect that no conductor shall be furloughed, dismissed, or placed in a worse condition with respect to his rate of pay, rules or working conditions, because of the termination, cancellation or modification of any contract between the Pullman Company and any railroad, or because of the merger, consolidation, transfer or abandonment of any railroad. It provides that if the number of positions are reduced as a result of any of the actions specified above, the Company is obligated to establish a like number of positions on the remaining operations. The proposed rule further provides that if for any reason the position of a Pullman conductor is discontinued and no other conductor position is available, then the displaced conductor shall be entitled to the benefits of the Washington Job Protection Agreement of 1936.

"In essence, there are two principal features of this proposal: a job freeze, and a severance pay plan.

"As for the job freeze, the proposal as interpreted by the Organization would require that so long as any Pullman conductor work remains in a particular seniority district, the number of Pullman conductor positions in that district would not be reduced, but in the event of a discontinuance of any conductor assignments, the remaining work would be divided among all the existing positions; and each conductor would continue to receive his full basic month's pay regardless of the amount of assigned work.

"This phase of the proposed rule would have the effect of 'freezing' conductors' jobs, whether or not there was work which warranted their existence. This is illustrated by the example used during the hearings, that if there were an eleven-man run and a three-man run in a given district and the eleven-man run were either terminated or taken over by a carrier, the remaining Pullman conductor work in the district which was previously done by three men would, under the proposed rule, be divided among the total of fourteen conductors, at full monthly pay.

"This requirement that conductors be continued in employment, regardless of how small an amount of work there may be for them to do, is extreme and does not represent a constructive approach to the problem. It will not preserve work for conductors, but is more likely to destroy the Company and all conductor work along with it. The Board must reject this part of the proposal for lack of merit.

line clearly outlined the proper direction that future negotiations between the parties should take in finding a solution to the problem of job security raised by the Section (6) notice of November 7, 1960:

> ". . . It appears to us that the railroads, the Pullman Company and the Organization, *all three must be involved.* We think that at the very least, the Pullman Company and the Organization should jointly attempt to devise some program for protection of Pullman

---

"The severance pay feature of the Organization's proposal provides that conductors whose jobs are terminated for any of the reasons mentioned under the job freeze proposal, or for any other reason such as loss of business, and for whom no other conductor work is available under the job freeze plan, shall receive benefits similar to those provided under the Washington Job Protection Agreement of 1936 for employees who lose their positions as the result of the merger or consolidation of railroads. The idea of some form of severance benefits for employees in the railroad industry is not new. Employees adversely affected by the consolidation or merger of their railroad employers have been guaranteed such benefits since 1936 under the Washington Job Protection Agreement of that year. The area of employee job protection in the railroad industry has been extended by the Interstate Commerce Commission which has, in connection with its approval of the abandonment of service by various carriers, ordered protective measures for employees along the lines of those provided in the Washington Agreement.

"The most recent extension of the area in which the principle of employee job protection has been applied in the railroad industry is found in the agreement executed on October 29, 1961, between the Southern Pacific Company (Pacific Lines) and the Order of Railroad Telegraphers. This agreement, among other things, provides certain benefits for telegraphers who lose employment because of technical and organizational changes instituted by the Southern Pacific.

"There are two essential differences presented by the Organization's proposal for severance benefits here, and the provisions for such benefits already existing in the railroad industry, to which we have referred. In the first place, the proposal before us would provide such benefits to all conductors deprived of employment, from whatever cause. No distinction is made as to loss of work due to decline in passenger demand, as opposed to loss of work resulting from mergers, consolidations and abandonments, or take-over of service by railroads.

"Existing severance pay plans in the railroad industry provide benefits for employees who suffer loss of employment because of mergers, consolidations and abandonments. But we find no example in the industry of severance allowances to employees who lose their jobs due simply to declining railroad business. We see no reason for recommending that Pullman conductors be afforded severance pay benefits not generally available in the industry.

"The second difference is that in all of the situations in the industry in which severance benefits are not provided, the cause of the job loss to employees involved is under the control of their employer. In the instant case, while the Pullman Company is the nominal employer of Pullman

conductors under these circumstances, which they can present to the railroads as a group, or to an individual railroad at such time as it indicates its intention to reclaim its sleeping cars. One approach, which apparently was given some thought in connection with the New York Central and which seems to us to have merit, would be to give displaced Pullman conductors some preference in filling new assistant train conductor positions which are created as the result of such takeover." (Emphasis supplied.)

The Board recommended that the *proposal* of the organization with respect to job stabilization be withdrawn.

---

conductors, it is not the Pullman Company, but its customers—the railroads—whose decisions cause the termination of conductor jobs under consideration here. Any real solution to the problem of Pullman conductors who are displaced due to mergers of railroads and take-overs by railroads of sleeping car service can only be accomplished by cooperation among all of the interested parties—the Pullman Company, the Organization and the railroad users of Pullman service. We can see no practical method or equitable justification for imposing upon the Pullman Company alone the responsibility for providing severance benefits to Pullman conductors displaced by mergers between railroads over which Pullman has no control, or by decisions of railroads to dispense with Pullman services, over which Pullman also has no control. In each of these cases, as far as Pullman is concerned, there is simply a loss of business to it.

"In view of the broad nature of the proposal, and the Company's lack of control over conductors' loss of employment, we do not think that the Organization's proposal as to severance benefits can be recommended as a solution of the problem to which it is directed.

"Although, for the reasons set forth above, we have concluded that the Organization's proposal should be withdrawn, we do not in any way belittle the importance and urgency of the problem which it was designed to solve. As we have indicated, the threat to Pullman conductors' employment is both real and immediate. These employees are all men with long years of service with the Pullman Company, and have attained middle age or beyond. The skills which they have acquired are unique to their occupation and are not readily usable in other fields. For these reasons they find little employment opportunity elsewhere.

"We think that in two specific sets of circumstances which we have pointed out: (1) mergers, consolidations or abandonments by railroads and (2) take-overs by railroads of sleeping car operations, some form of job protection for Pullman conductors who are adversely affected thereby, should be considered.

"The loss of jobs by Pullman conductors because of a merger, consolidation or abandonment, presents a particularly inequitable situation. In each of these cases, all of the employees of the railroads involved would be protected by the Washington Job Agreement. The Pullman conductors, whose jobs are affected in precisely the same way and for precisely the same reasons as the jobs of the railroad employees, do not receive the protection of this Agreement. The reason for this is purely and simply

The organization, declaring that they were attempting to comply with the suggestions of the Emergency Board, submitted on December 28, 1961, to Pullman a document intended to adapt the Washington Job Protection Agreement to the situation of Pullman conductors. On December 29, 1961, the organization presented to Pullman a letter which might be addressed jointly by Pullman and its conductors to the railroads using the services of Pullman, together with a "Joint Proposal" which Pullman and the organization might submit to the railroads. Pullman does

---

because the railroads operate their sleeping car service through a separate corporate structure, the Pullman Company, which is not a party to the merger. We can see no equity in this difference in treatment of Pullman conductors who lose their jobs because of the merger, consolidation or abandonment, and of employees of the railroads involved who lose their jobs for the same reason.

"The loss of conductor jobs which may be caused by railroads taking over their sleeping cars from the Pullman Company, and operating them with railroad employees instead of Pullman conductors, is unique in the industry. Under the Uniform Service Contract, any railroad user of Pullman service may, on proper notice, terminate its use of Pullman service, reclaim the sleeping cars owned by it and operate these cars itself. The Pullman Company has no control whatsoever over the railroad's decision.

"It is difficult to relate this kind of job insecurity of Pullman conductors to that of any other group of railroad employees; although the basic cause of the job loss seems not too different from job loss due to reorganization. In any case, such a take-over, when it occurs, can result in wholesale unemployment of Pullman conductors; witness the New York Central take-over in 1958, as a result of which 122 Pullman conductors lost employment. We have already indicated that the problem is not likely to be solved by the Organization and the Pullman Company alone. Another Board has said, in the New York Central case, that the problem cannot be solved by the Organization and a particular railroad alone. It appears to us that the railroads, the Pullman Company and the Organization, all three must be involved. We think that at the very least, the Pullman Company and the Organization should jointly attempt to devise some program for protection of Pullman conductors under these circumstances, which they can present to the railroads as a group, or to an individual railroad at such time as it indicates its intention to reclaim its sleeping cars. One approach, which apparently was given some thought in connection with the New York Central and which seems to us to have merit, would be to give displaced Pullman conductors some preference in filling new assistant train conductor positions which are created as the result of such takeover.

"We feel that the Organization and the Pullman Company, if they determine to make a thorough and sincere effort, can originate a more workable solution to the problem of greater job security for Pullman conductors than the proposal which was submitted to this Board.

"The Board recommends that the proposal of the Organization with respect to job stabilization be withdrawn."

not dispute the fact that the organization submitted various proposals, but insists that they were merely informal proposals not embodied in a Section (6) notice as required by the Railway Labor Act. Pullman agrees that the proposals fell in two areas:

> "1. Extension of the Washington Job Protection Agreement benefits to Pullman conductors adversely affected by railroad mergers and abandonments;
>
> "2. In the event of take-overs of sleeping car service, Pullman conductors to become railroad employees, carrying their jobs and seniority with them and working under the terms of their collective bargaining agreement with Pullman."

Several meetings followed, various counter-proposals were made by Pullman, and numerous letters were exchanged by the parties without agreement being reached. On April 3, 1962, the organization gave notice of a strike to begin April 12. On April 3, the National Mediation Board gave notice that it would again enter the proceedings, in the meantime requesting a further postponement of the strike. The organization agreed to continue its conferences with Pullman and the Board, but declined to postpone the strike. The instant action began on April 10. First a temporary restraining order was granted; then followed the permanent injunction.

I.

The District Court, in its findings of fact and conclusions of law stated:

Findings of Fact—

> "11. The Conductors' second proposal of December 28, 1961, was a so-called 'Joint proposal' to be signed by Pullman and the organization, and the railroad users of Pullman service . . . This Joint Proposal was not included in the Conductors' notice of November 7, 1960; or any other notices served by the organization pursuant to Section 6 of the Railway Labor Act.

Conclusions of Law—

"2. Plaintiff and defendants are both subject to the duty imposed by the Railway Labor Act to exert every reasonable effort to settle all disputes in order to avoid any interruption to commerce or to the operation of any carrier. * * *

"3. Defendants' refusal to postpone their threatened strike pending the efforts of the National Mediation Board to mediate a settlement of the dispute violated the Railway Labor Act.

* * * * *

"6. The proposals first presented by defendants in December, 1961, raised new issues beyond the scope of any notice previously served by defendants pursuant to Section 6 of the Railway Labor Act. As to the issues now in dispute between the parties the processes of the Railway Labor Act have not been exhausted. The strike called by defendants is, therefore, illegal and should be enjoined."

We hold that these conclusions, both factual and legal, are, as a matter of law, erroneous.

We believe that a Section (6) notice is adequate if it informs a party of the purpose sought to be attained by the other party with sufficient definition to enable the former to understand the implications of the notice and proposed means adapted to the goal's attainment. The fact that the course suggested for the attainment of the goal proves to be unacceptable to one of the parties, or is found impractical by a Presidential Emergency Board (as here), does not render nugatory the good-faith tender of a Section (6) notice or affect its scope.

In the instant case, the Section 6 notice of November 7, 1960, adequately informed Pullman that the goal of the organization was job protection in situations arising from "the termination, cancellation or modification of any con-

tract between The Pullman Company and any other common carrier by railroad" or "[t]he abandonment, transfer, consolidation or merger of any other common carrier by railroad that affects the operation of sleeping or parlor cars owned by or leased to The Pullman Company." Pullman was put on notice of its implications when the notice was given. Certainly, if the company was not cognizant of its implications at that time, it became so after the Emergency Board made its recommendations. To hold that every proffer of a new solution to a problem gives rise to a right on the part of one of the bargaining parties to demand a new Section (6) notice would foster inflexible attitudes, a result not consonant with free collective bargaining or the spirit of the Railway Labor Act.

The proposals of December, 1961, only attempted to implement the suggestions of the Emergency Board. The fact that Pullman and the organization reached an impasse in negotiations on the "means" by which job protection was to be accomplished is immaterial to whether the organization violated the Railway Labor Act. If the parties complied with the bargaining requirements of the Act, the District Court had no authority to grant the injunction.

In the words of the United States Supreme Court, "The parties are required to submit to the successive procedures designed to induce agreement. Section 5 First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self help." *Elgin, J. & E. R. Co.* v. *Burley*, 325 U. S. 711, 725 (1945). See also, *Brotherhood of Locomotive Engineers* v. *Baltimore & Ohio Railroad Co.*, 31 Law Week 4240 (Mar. 4, 1963).

We think it significant that at no time before this suit was started did Pullman protest to the organization or any of the government boards that the proposals in question were not covered by the November 7, 1960, Section (6) notice.

II.

Because of our determination that the proposals of December, 1961, were within the scope of the Section (6) notice filed on November 7, 1960, the conclusion of the District Court that the reentry of the National Mediation Board into the dispute on April 3, 1961, started a new running of the statutory thirty-day waiting period is erroneous. Only one such waiting period is required by the statute. *Elgin J. & E. Ry. Co.* v. *Brotherhood of Railroad Trainmen*, 302 F. 2d 540 (7th Cir. 1962). *Pan American World Airways* v. *Flight Eng. Intern. Assoc.*, 306 F. 2d 840 (2nd Cir. 1962).

III.

We do not believe that the District Court could legally inquire into the strike authority of the conductors' organization as obtained from its membership.[3] The Order of Railroad Conductors and Brakemen is the duly certified bargaining representative of the Pullman conductors under the Railway Labor Act. Whether the conductors fully complied with the rules of their organization does not warrant, in this setting, an inquiry by the court. Such would be no more justified than would be an examination into the intracorporate activities of Pullman to determine whether it followed the desires of its stockholders or board of di-

---

[3] The District Court's conclusions of law number 4 and 7 read in part:

"4. The issues now in dispute between the parties are substantially different from those submitted and voted on by the members of the Conductors' organization in September, 1959. In calling the present strike, defendants failed to follow the procedures required by the Statutes of the Order of Railway Conductors and Brakemen. Defendants' duty to exert every reasonable effort to avoid interruptions to commerce requires them to obtain valid authority under their Statutes from their membership before calling a strike.

* * * * * *

"7. * * * An injunction should issue enjoining defendants from striking over the proposals in dispute until . . . authority obtained for a strike from the membership pursuant to the Statutes of the Order of Railway Conductors and Brakemen."

rectors or was in compliance with its corporate charter in not acceding to the organization's proposals.

IV.

The District Court found that the proposals made by the organization in December, 1961, contemplated inter-corporate bargaining between Pullman and the railroads, and hence, were unlawful. It seems to us untenable to say that the organization violated the Railway Labor Act when these proposals embodied the very suggestions made to the parties by the Presidential Emergency Board and when the Board had asked the organization to withdraw its previous proposal with respect to job stabilization.

To hold that the District Court was correct in branding these proposals illegal, would be to say that the Emergency Board disapproved an impractical approach to the problem and suggested an illegal alternative. The Railway Labor Act should not be interpreted so as to create that kind of contradiction.

Since we are convinced that as a matter of law there was no showing of a violation by the Order of Railroad Conductors and Brakemen of the Railway Labor Act, the Norris-LaGuardia Act prevented the District Court from issuing the injunction. The order granting it is reversed.

APPENDIX C

ORDERS BELOW

IN THE

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

Wednesday, April 10, 1963

Before

Hon. ELMER J. SCHNACKENBERG, *Circuit Judge*
Hon. LATHAM CASTLE, *Circuit Judge*
Hon. LUTHER M. SWYGERT, *Circuit Judge*

THE PULLMAN COMPANY, Plaintiff-Appellee, vs. ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, A. G. WISE and G. H. HARRIS, Defendants-Appellants.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

No. 13844

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, REVERSED, with costs, in accordance with the opinion of this Court filed this day.

IN THE

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

Monday, May 20, 1963

Before

Hon. JOHN S. HASTINGS, *Chief Judge*
Hon. F. RYAN DUFFY, *Circuit Judge*
Hon. ELMER J. SCHNACKENBERG, *Circuit Judge*
Hon. WIN G. KNOCH, *Circuit Judge*
Hon. LATHAM CASTLE, *Circuit Judge*
Hon. ROGER J. KILEY, *Circuit Judge*
Hon. LUTHER M. SWYGERT, *Circuit Judge*

THE PULLMAN COMPANY, Plaintiff-Appellee, vs. ORDER OF RAILWAY-CONDUCTORS AND BRAKEMEN, et al., Defendants-Appellants.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 13844	

All of the active members of the Court having voted to deny the petition for rehearing en banc,

IT IS HEREBY ORDERED that the said petition for rehearing en banc be, and the same is hereby DENIED.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 27 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

NO. 205.

THE PULLMAN COMPANY,

Petitioner,

vs.

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, A. G. WISE, and G. H. HARRIS,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BURKE WILLIAMSON,
JACK A. WILLIAMSON,
39 South La Salle Street,
Chicago 3, Illinois,

HARRY WILMARTH,
SHUTTLEWORTH & INGERSOLL,
1120 Merchants National Bank Building,
Cedar Rapids, Iowa,

Attorneys for Respondents.

June 26, 1963.

GILLESPIE-SHEALY COMPANY, CHICAGO 868

SUBJECT INDEX

	PAGE
Question Presented	1
Statutes Involved	2
Statement of the Case	2
Reasons for Denying the Writ	3
Argument	5
The Question Sought to be Reviewed is Not Properly Presented on the Record	5
The Question Sought to be Reviewed is Not of Sufficient Importance to Warrant Certiorari	6
Conclusion	8

TABLE OF AUTHORITIES.

Cases.

Helvering v. Wood, 309 U. S. 344 (1940)	6
Rudolph v. United States, 370 U. S. 269 (1962)	7

Statutes and Rules.

Norris-LaGuardia Act, 29 U. S. C. § 101 et seq.	2
Supreme Court Rules:	
Rule 19	4, 6
Rule 23.1 (c)	4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

NO. 1177

THE PULLMAN COMPANY,

Petitioner,

vs.

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, A. G. WISE, and G. H. HARRIS,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The above-named respondents will be referred to herein as the Conductors, and petitioner will be referred to as Pullman.

QUESTION PRESENTED

Pullman apparently wishes to present for review only one question: whether the parties "exerted every reasonable effort" to settle the dispute over job security in their handling of certain settlement proposals made by the Conductors in December, 1961 (Petn. 2). These proposals were

based on suggestions made by the Emergency Board in its report of December 11, 1961 for settlement of job protection demands originally submitted to Pullman by the Conductors on November 7, 1960 (Petn. 5, 6, 21, 26).

As will hereinafter be shown, Pullman has materially shifted its position with respect to these settlement proposals, and as a result of such departure from its original theory of the case, the question as now stated by Pullman is not properly presented for review on the record brought here.

STATUTES INVOLVED

The petition fails to state that the Norris-LaGuardia Act, 29 U. S. C. § 101, et seq., is involved, as noted in the opinion below (Petn. 15, 26).

STATEMENT OF THE CASE

Pullman's statement of the case (Petn. 2-4) is misleading in that it fails to state the position originally taken by Pullman on the job protection settlement proposals made by the Conductors in December, 1961. It is also misleading in that it gives the impression that these settlement proposals were the only issues involved in the strike notice issued April 2, 1962.

Actually, these settlement proposals were only two of many issues remaining unsettled when the strike was set (R. 105-106, 119, 169-171). The unsettled issues include, among others, a reduction of the basic work month for Conductors from 205 hours to 180 hours as requested by the Conductors and specifically recommended by the Emergency Board (R. 183). Although "tentative" agreement had been

reached on the application of the 180-hour month (R. 63), even this was not put into effect because of Pullman's rejection of the job protection proposals (R. 105). The Conductors were advised on the dates these proposals were made, December 28 and 29, 1961, that Pullman "would not consider" them (R. 103-105). The position of the Conductors, as stated by their representative, Mr. Wise, to Pullman's representative, Mr. Boeckelman, is clearly shown by the following (R. 106):

> "* * * I said to Mr. Boeckelman, 'You have our proposals. You have not submitted any proposals on these issues. You have ours. It would be appreciated if you would give further consideration to these, and we will be available. You know where to get in touch with me, and we will be available any time you want a conference, and we will be there.'"

Pullman's Complaint alleges that the Conductors violated the Railway Labor Act by making such proposals (R. 7-10). Pullman charged (1) that both proposals were beyond the scope of any previous notice served under Section 6 of the Railway Labor Act, and (2) that the so-called "Joint Proposal" of December 28, 1961 submitted by the Conductors was not bargainable and was "improper and unlawful" under the Railway Labor Act (R. 10). Pullman's position as to these settlement proposals was sustained by the District Court, which granted an injunction on both of these grounds relied on by Pullman (R. 245-247).

REASONS FOR DENYING THE WRIT

1. Pullman, having taken the position outlined above with respect to the settlement proposals of December, 1961, cannot now be heard to urge that certiorari should be granted on the theory that these proposals "required fur-

ther discussion and negotiation" (Petn. 5). This new theory seeks, in effect, not a review of the case is it was decided below, but a trial *de novo* in this Court, with leave to Pullman to amend its Complaint so as to seek an injunction on a new ground wholly inconsistent with those passed on below. It follows that the question presented by Pullman for review is not "expressed in the terms and circumstances of the case", as required by Rule 23-1(c) of this Court.

2. The question sought to be reviewed does not meet the standards indicated in this Court's Rule 19. Pullman has shown no special or important reasons for the exercise of this Court's discretion to review on writ of certiorari.

ARGUMENT.

The Question Sought to be Reviewed is Not Properly Presented on the Record.

Pullman asserts that the Court of Appeals "mistakenly treated the appeal as if it involved a question of notice under Section 6 of the Railway Labor Act, representing Pullman as claiming that the organization had not observed the correct procedure in submitting its proposals and therefore had not earned the right to strike" (Petn. 5). Pullman insists that it "made no such claim" (Petn. 5).

The record here does not bear out Pullman's assertion that it made no such claim. The Complaint makes the claim that the Conductors violated the Railway Labor Act by submitting a proposal which "was not included in defendants' notice of November 7, 1960, or any other notices served by defendants pursuant to Section 6 of the Railway Labor Act" (R. 7-10). The District Court sustained this claim of Pullman in the following conclusion:

> "The proposals first presented by defendants in December, 1961, raised new issues beyond the scope of any notice previously served by defendants pursuant to Section 6 of the Railway Labor Act" (R. 246).

When the Conductors moved the District Court to vacate the injunction which had been granted, Pullman successfully claimed as follows:

> "These radically different proposals [of December 28 and 29, 1961], however, were never served formally under Section 6, and no strike could be called over them" (R. 258).

Having made such a record, Pullman obviously is not in a position now to disown the fact that the anti-strike in-

junction was obtained by it on the ground (among others now apparently abandoned) that the Conductors illegally made proposals not covered by proper Section 6 notices. Yet Pullman now takes the opposite position that these proposals were adequately covered by the Conductors' Section 6 notice of November 7, 1960 (Petn. 5), that Pullman never raised any objection to the settlement proposals on the ground that no notice was served (Petn. 7), and that the Court of Appeals was concerned with "a nonexistent notice question" (Petn. 8).

Pullman now says that review should be had on the question of "adequacy of negotiations" regarding the settlement proposals made by the Conductors in December, 1961 (Petn. 8). This would inject a new issue which Pullman would not be entitled to raise here even if certiorari were granted. A petitioner should not be allowed "to add here for the first time another string to his bow." *Helvering* v. *Wood*, 309 U. S. 344, 349 (1940).

In short, Pullman would have the Conductors' settlement proposals of December, 1961 do double duty: to provide the basis for an injunction below on the theory that the proposals should not have been made at all, and to provide the basis for review here on the theory that they were worthy of more consideration than they received.

The Question Sought to be Reviewed is Not of Sufficient Importance to Warrant Certiorari.

We have not noted any specific claim made by Pullman that the question it seeks to present is one which merits discretionary review under the criteria indicated in Rule 19 of this Court. The petition is, to a considerable extent, a mere quarrel with the opinion of the Court of Appeals re-

garding its view of the ultimate facts involved, principally those concerning the character and extent of negotiations between December, 1961 and April, 1962 regarding the Conductors' settlement proposals (Petn. 7-10). Certiorari is usually not warranted in such cases involving questions of ultimate facts because "their review would be of no importance save to the litigants themselves". *Rudolph* v. *United States*, 370 U. S. 269, 271 (1962).

However, we assume that Pullman believes the question it would have this Court decide is one of general importance. Pullman's present posture in this case is that "not even the first requirement" of negotiation under the Railway Labor Act has been met (Petn. 4). This argument necessarily supposes that the settlement proposals made by the Conductors in December, 1961 required a re-run of the Railway Labor Act procedures of negotiation, mediation and Emergency Board consideration. Pullman's proposition evidently is that after these procedures have been completed in a railway labor dispute without producing a settlement, if either party then proposes a new solution to the dispute, that proposal starts the whole procedure over again, and neither party can resort to self help until the second cycle is completed, and then only if no additional new settlement proposal is made by either side requiring a third cycle. It is not surprising that Pullman has cited no case which interprets the Railway Labor Act as providing such a means for perpetuating the *status quo* in a railway labor dispute. We submit that unless and until some court does so interpret the Railway Labor Act, the question does not merit review here.

CONCLUSION.

Respondents submit that the petition does not disclose any sufficient reason for granting certiorari, and that the writ should be denied.

Respectfully submitted,

BURKE WILLIAMSON,
JACK A. WILLIAMSON,
39 South La Salle Street,
Chicago 3, Illinois,

HARRY WILMARTH,
SHUTTLEWORTH & INGERSOLL,
1120 Merchants National Bank Building,
Cedar Rapids, Iowa,

Attorneys for above named Respondents.